

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3189 OF 2004

IN

SUIT NO.2872 OF 2004

...

State Bank of India

...Plaintiff

v/s.

Sujith Raghunath Shetty

and anr.

...Defendants

...

Mr.V.R.Dhond i/b Little & Co. for the Plaintiff.

None for the Defendants.

...

CORAM: D.K.DESHMUKH, J.

DATED: 27TH OCTOBER, 2005

P.C. :

1. When this Notice of Motion came before the court on 16th September, 2005 Mr.V.B. Tiwari appeared for the Plaintiff. He stated that the Defendants have not been served and that he has not been able to effect service because despite he addressed communication to the the Plaintiff/ State Bank of India, he is not receiving any response from the officers of the State Bank of India. Therefore, the court directed the senior responsible officer of the SBI to remain present in the Court. Thereafter, an affidavit has been filed on behalf of the Plaintiff stating therein that service of Notice of Motion on the Defendants have already been effected and an affidavit of service dated 30th December, 2004 has already been filed in this Notice of Motion.

2. Perusal of the affidavit of service dated 30th December, 2004 shows that that affidavit is signed by Mr.V.B.Tiwari as an advocate for the Plaintiff and it is stated in that affidavit that Defendants Nos. 1 & 2 have been served. The Defendants thus are served.

They are not appearing. They have also not filed any affidavit in reply. In the absence of any affidavit in reply filed on behalf of the Defendants, accepting the averments made in the affidavit filed in support of the Notice of Motion at their face value, Notice of Motion is granted in terms of prayer clause (b), excluding the bracketed portion.

3. The Receiver is directed not to disturb the possession of the occupant of the flat, but take only symbolic possession. The Receiver shall make an offer to the Defendant for being appointed as an agent of the Receiver to be in possession of the flat on usual terms and conditions including security and royalty. In case, the Defendants do not enter into the agency agreement within a period of six weeks from the date on which an offer is made to them, then the Receiver shall take physical possession of the property and appoint the Plaintiff as his agent to be in possession of the flat on usual terms and conditions, but without security and royalty. In that event, the Plaintiff shall be at liberty to take out a motion claiming further reliefs.

Ad-interim order in terms of prayer clause (a) shall

operate till the Receiver takes possession.

4. It is clear from the affidavit filed on behalf of the Plaintiff that an incorrect and false statement was made before the court by Mr.V.B.Tiwari, Advocate. It prima facie appears that Mr.V.B.Tiwari made a patently incorrect statement before the court and therefore the court issued directions for officers of the State Bank of India to remain present. In this view of the matter, therefore, the Prothonotary & Sr.Master is directed to issue notice to Mr. V.B.Tiwari, advocate to show cause why proceeding should not be initiated against him under the Contempt of Court Act for having made an incorrect statement before the Court. Along with the notice copy of this order be also sent to Mr.V.B. Tiwari, Advocate. Show cause notice is made returnable after a period of two weeks from the date of its issuance.

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